

SENATE BILL No. 325

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-3.

Synopsis: Group self-insurance. Provides that an employer may join a worker's compensation self-insurance group consisting of at least 11 employers that have associated for the purpose of pooling their liabilities under the worker's compensation law and the worker's occupational diseases compensation law. Establishes the group guaranty fund to meet the obligations of defaulting worker's compensation self-insurance groups.

Effective: July 1, 1999.

Meeks R

January 8, 1999, read first time and referred to Committee on Pensions and Labor.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 325

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-3-5-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) Every employer under
3 IC 22-3-2 through IC 22-3-6, except those exempted by IC 22-3-2-5,
4 shall:

5 (1) insure and keep insured the employer's liability under
6 IC 22-3-2 through IC 22-3-6 in some corporation, association, or
7 organization authorized to transact the business of worker's
8 compensation insurance in this state; ~~or~~

9 (2) furnish to the worker's compensation board satisfactory proof
10 of the employer's financial ability to pay direct the compensation
11 in the amount and manner and when due as provided in IC 22-3-2
12 through IC 22-3-6; or

13 (3) **join a worker's compensation self-insurance group**
14 **consisting of at least eleven (11) employers that have**
15 **associated under IC 22-3-5.1 for the purpose of pooling their**
16 **liabilities.**

17 (b) Under subsection (a)(2) **and (a)(3)**, the board may require the



1 deposit of an acceptable security, indemnity, or bond to secure the
 2 payment of compensation liabilities as they are incurred. The board
 3 shall charge the following:

4 (1) An initial application fee of **two thousand dollars (\$2,000)**
 5 **for group self-insurers and** five hundred dollars (\$500) **for**
 6 **individual self-insurers** to be paid along with the proof of
 7 financial ability required under this section **and IC 22-3-5.1.**

8 (2) A renewal fee of **one thousand dollars (\$1,000) for group**
 9 **self-insurers if the group holds a certificate of approval and**
 10 **two hundred fifty dollars (\$250) for individual self-insurers if**
 11 **the employer holds a certificate of self-insurance.**

12 (3) A late filing fee of two hundred fifty dollars (\$250).

13 SECTION 2. IC 22-3-5.1 IS ADDED TO THE INDIANA CODE
 14 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 1999]:

16 **Chapter 5.1. Group Self-Insurance**

17 **Sec. 1. (a) As used in this chapter, "aggregate excess insurance"**
 18 **means an insurance policy written on a claims incurred basis that**
 19 **insures claims to a stated limit in excess of a specified percentage**
 20 **of the earned premium or in excess of the group retention amount.**

21 **(b) As used in this chapter, "assets" means:**

22 **(1) investments, cash, and reinsurance recoverable from**
 23 **authorized reinsurers on paid losses; and**

24 **(2) amounts due from group participants that are not more**
 25 **than sixty (60) days past due.**

26 **(c) As used in this chapter, "authorized insurer" means an**
 27 **insurer licensed in Indiana that has a rating of "A-" or better from**
 28 **A.M. Best's Insurance Reports and that has a policyholders'**
 29 **surplus of at least twenty-five million dollars (\$25,000,000) at the**
 30 **end of the most recent calendar year.**

31 **(d) As used in this chapter, "board" means the worker's**
 32 **compensation board.**

33 **(e) As used in this chapter, "calendar year" means the period**
 34 **beginning January 1 and ending December 31.**

35 **(f) As used in this chapter, "calendar quarter" means each**
 36 **period of three (3) consecutive calendar months that ends March**
 37 **31, June 30, September 30, and December 31.**

38 **(g) As used in this chapter, "fiscal year" means the fiscal year**
 39 **established by the board of trustees of a worker's compensation**
 40 **self-insurance group.**

41 **(h) As used in this chapter, "insolvency" means the inability of**
 42 **a worker's compensation self-insurance group to pay its**



1 outstanding lawful obligations as they mature in the regular course
2 of business.

3 (i) As used in this chapter, "service company" means an
4 individual or a legal entity that provides services, including the
5 following services, on behalf of a worker's compensation
6 self-insurance group:

- 7 (1) Claims adjustment.
- 8 (2) Safety engineering.
- 9 (3) Compilation of statistics and the preparation of premium,
10 loss, and tax reports and other self-insurance reports.
- 11 (4) Administration of a claim fund.
- 12 (5) Placement of excess insurance.
- 13 (6) The carrying out of the policies established by the group's
14 board of trustees and daily management of the group.

15 (j) As used in this chapter, "specific excess insurance" means an
16 insurance policy that insures the amount of any claim from an
17 occurrence involving one (1) or more employees or employers in
18 the same occurrence or incident of exposure in excess of a specified
19 dollar amount or self-insured retention.

20 (k) As used in this chapter, "standard contribution" means the
21 gross contribution derived from the manual rates adjusted by
22 experience modification factors but before advance payment
23 discounts.

24 (l) As used in this chapter, "worker's compensation
25 self-insurance group" or "group" means a nonprofit association
26 consisting of at least eleven (11) employers that:

- 27 (1) are:
 - 28 (A) engaged in the same or a similar type of business; or
 - 29 (B) members of a bona fide professional, commercial,
30 industrial, or trade association; and
- 31 (2) have associated to jointly self-insure their worker's
32 compensation, worker's occupational diseases compensation,
33 and employer's liability in Indiana.

34 Sec. 2. (a) An employer may join with at least ten (10) other
35 employers that are:

- 36 (1) engaged in the same or similar type of business; or
- 37 (2) members of a bona fide professional, commercial,
38 industrial, or trade association;

39 to form a worker's compensation self-insurance group to pool the
40 employers' liabilities under IC 22-3-2 through IC 22-3-7.

41 (b) To form a self-insurance group under this chapter, the
42 employers must:



(1) enter into a pooling agreement described in section 4(d) of this chapter;

(2) enter into an agreement with a service company that will administer the group's self-insurance program;

(3) file an application for a certificate of approval with the board as provided under section 4 of this chapter; and

(4) meet the requirements of this chapter and IC 22-3-5.2.

(c) A group may not issue binders or certificates of insurance for coverage of an employer's liability under the worker's compensation law (IC 22-3-2 through IC 22-3-6) and worker's occupational diseases compensation law (IC 22-3-7) unless the group has been certified to do so by the board under this chapter. A certificate of approval issued by the board remains in effect unless revoked by the board under section 8 of this chapter.

Sec. 3. A worker's compensation self-insurance group that is issued a certificate of approval by the board under this chapter is not an insurer or insurance company and is not subject to the insurance laws and regulations except as provided in this chapter.

Sec. 4. (a) An initial application for a certificate of approval to establish a worker's compensation self-insurance group must be filed with the board along with a nonrefundable filing fee of two thousand dollars (\$2,000). The group must include with the initial application the documentation and information required by this section.

(b) A proposed group must provide the following information with an initial application for a certificate of approval:

(1) A listing of initial members of the group.

(2) Information about the initial members of the group on forms prescribed by the board and completed by each individual member.

(3) The initial annual rates to be charged to members of the group and an explanation of how the rates have been developed.

(4) The anticipated first year premium.

(5) The anticipated first year losses.

(6) An aggregate loss history of initial members of the group for each of the three (3) years preceding the date of the application.

(7) The aggregate premium that would have been received at the proposed rate for each of the three (3) years preceding the date of the application, assuming the losses described in subdivision (5).



(8) The net retention of the group and a list of initial insurers.

(9) The names of all the entities that will provide services for the group and their functions and the contracts connected to the services.

(10) Safety and loss control programs to be provided or required.

(11) The plans for expansion of the group and the anticipated future membership of the group.

(c) The following information concerning a group's service company must be provided to the board with the initial application for a certificate of approval:

(1) Biographical information of the service company, including information concerning loss control, claims handling, underwriting, and internal accounting personnel.

(2) A summary of the service company's organization and staff.

(3) A description of the administrative services to be provided to the group.

(4) If the service company is a corporation, biographical information of all officers and directors and a copy of the articles of incorporation and bylaws.

(5) The location of administrative offices and the nature of any electronic data processing equipment available for servicing the group to demonstrate that the service company has the resources to administer the self-insurance program.

(6) Written evidence from an authorized insurer or a surety company authorized to transact business in Indiana that the service company can secure the fidelity bond required by section 12 of this chapter.

(d) A copy of a group's pooling agreement must be provided to the board with an initial application for a certificate of approval, and the pooling agreement must contain the following:

(1) The services to be provided by the service company.

(2) The method of proportioning costs among members.

(3) The initial premium deposit.

(4) An assessment provision consistent with the requirements under section 15 of this chapter.

(5) The termination provisions and a minimum term of membership.

(6) An indemnity provision jointly and severally binding the group and each member of the group to meet the liability obligations of each member under the worker's compensation

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law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases compensation law (IC 22-3-7).

(7) The powers and duties of the board of trustees, including the terms of office of the trustees.

Sec. 5. (a) The board shall act upon a completed application for a certificate of approval not later than sixty (60) days after receipt of the application. If, because of the number of applications, the board is unable to act upon an application within this period, the board has an additional sixty (60) days to act on the application.

(b) The board shall consider the following when acting on the application:

(1) The number of employees covered by the group pooling arrangement.

(2) The combined net worth of group participants.

(3) Any excess insurance purchased from authorized insurers.

(4) The terms of an excess insurance policy.

(5) Combined experience under the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases compensation law (IC 22-3-7) for the group for the last three (3) years.

(6) Other financial data requested by the board.

(7) The resources of the service company.

(8) The group requirements of section 7 of this chapter.

(c) The board shall issue to the group a certificate of approval or, if the board finds that the proposed group does not meet all the requirements of this chapter, the board shall issue an order refusing a certificate of approval that sets forth the reasons for the refusal.

Sec. 6. After the date of approval of the initial application of the group, prospective new members of the group shall submit an application for membership to the service company. The service company may approve the application for membership under the group's underwriting guidelines.

Sec. 7. (a) To obtain and maintain a certificate of approval, a worker's compensation self-insurance group must comply with subsection (b) and any other requirements established by law, rule, or regulation.

(b) The group must have the following:

(1) A combined net worth of all members of the group of at least two million five hundred thousand dollars (\$2,500,000).

(2) Specific excess insurance provided by an acceptable authorized insurer in an amount of at least ten million dollars



1 (\$10,000,000) per occurrence for liability under the worker's
 2 compensation law (IC 22-3-2 through IC 22-3-6) and the
 3 worker's occupational diseases compensation law (IC 22-3-7).
 4 In addition, groups that have not been in operation for at least
 5 five (5) years and have not generated an average annual
 6 standard contribution of at least five million dollars
 7 (\$5,000,000) over the preceding three (3) years may be
 8 compelled by the board to procure aggregate excess
 9 insurance.

10 (3) If required, security provided by a surety bond, security
 11 deposit, or letter of credit, as provided in section 14 of this
 12 chapter, in an amount of at least one hundred thousand
 13 dollars (\$100,000) but not more than two hundred fifty
 14 thousand dollars (\$250,000).

15 (4) An estimated annual standard contribution of at least two
 16 hundred fifty thousand dollars (\$250,000).

17 (5) An indemnity agreement jointly and severally binding the
 18 group and each member of the group to meet the worker's
 19 compensation obligations of each member.

20 (6) A fidelity bond for the service company in the form and
 21 amount prescribed by the board under section 12 of this
 22 chapter.

23 (7) If the service company contracts with another party to
 24 provide any of its administrative or professional services, a
 25 fidelity bond for the subcontractor in the form and amount
 26 prescribed by the board. The board may also require a
 27 subcontractor providing claim services to furnish a
 28 performance bond in the form and amount prescribed by the
 29 board.

30 (c) To maintain its status as a worker's compensation
 31 self-insurance group, the following annual reporting requirements
 32 must be met by the group:

33 (1) Before June 1 of each year, a group shall file with the
 34 board a financial statement in the form prescribed by the
 35 board setting forth the group's assets, liabilities, and surplus
 36 funds for the preceding calendar year. The board may require
 37 quarterly supplementary summary statements to be filed at
 38 least sixty (60) days following the end of each calendar
 39 quarter.

40 (2) Before June 1 of each year, a group shall file with the
 41 board an audited financial statement reporting the financial
 42 condition of the group as of the end of the most recent



calendar year and changes in the surplus funds for the year. The financial statement may be prepared in accordance with generally accepted accounting principles or the Governmental Accounting Standards Board. The annual audited financial report must include the following:

(A) The report of an independent certified public accountant.

(B) A balance sheet reporting assets, liabilities, and surplus funds.

(C) The discount rate at which reserves are discounted.

(D) A statement of gain or loss from operations.

(E) A statement of changes in financial position.

(F) A statement of changes in surplus funds.

(G) Notes to financial statements.

(d) A group shall participate as a member of the group guaranty fund established under IC 22-3-5.2.

(e) The board may require a group to file an independent actuarial opinion by a member of the American Academy of Actuaries or Casualty Actuarial Society as to the sufficiency of the loss and loss adjustment expenses reserves.

(f) The books and records relating to the operations of a group must be available for inspection by the board during normal business hours.

Sec. 8. After notice and opportunity for a hearing, the board may revoke a group's certificate of approval if any of the following occur:

(1) The group is found to be insolvent.

(2) The group fails to pay any premium tax, regulatory fee or assessment, or special fund contribution imposed on the group.

(3) The group fails to comply with any of the provisions of this chapter, rules adopted under this chapter, or an order of the board within the time prescribed.

(4) The board finds that:

(A) the certificate of approval that was issued to the group was obtained by fraud;

(B) there was a material misrepresentation in the application for the certificate of approval; or

(C) the group or its service company has misappropriated, converted, illegally withheld, or refused to pay on proper demand money that belongs to a member, an employee of a member, or a person otherwise entitled to the money



when the money has been entrusted to the group or the group's service company in its fiduciary capacity.

(5) The group fails to maintain membership in the group guaranty fund or fails to pay an assessment levied by the group guaranty fund as provided under IC 22-3-5.2.

Sec. 9. (a) A group must be operated by a board of trustees consisting of at least three (3) but not more than seven (7) persons whom the members of a group elect for stated terms of office. A majority of the trustees must be employees, officers, or directors of members of the group. The group's service company or an owner, officer, employee, or any other person affiliated with the service company may not serve on the board of trustees of the group. All trustees must be residents of Indiana or officers of corporations authorized to do business in Indiana.

(b) The board of trustees of a group shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the group, including the following:

(1) Maintain minutes of meetings held by the board of trustees and make the minutes available to the board.

(2) Designate a service company to carry out the policies established by the board of trustees and to provide daily management of the group.

(3) Specify in the written minutes of meetings held by the board of trustees the areas of authority delegated to the service company.

(4) Retain an independent certified public accountant to prepare the statement of financial condition required by this chapter.

Sec. 10. All excess insurance policies must have a term of at least one (1) year. A cancellation, a termination, or an alteration of coverage, whether by or at the request of the insured or by the group, may not take effect before the expiration of sixty (60) days after written notice of the cancellation, termination, or alteration has been filed with the board, unless an earlier cancellation, termination, or alteration date is approved by the board. However, ten (10) days written notice is sufficient for cancellation due to the nonpayment of a premium.

Sec. 11. A worker's compensation self-insurance group shall at all times maintain reserves:

(1) sufficient to provide for the payment of all losses and claims incurred, whether reported or unreported, that are unpaid and for which the group may be liable; and



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(2) to provide for the expense of adjustment or settlement of the losses and claims.

Sec. 12. (a) A service company shall procure and maintain in force blanket fidelity surety bonds on employees and officers in an amount determined under subsection (d). The bonds must be written with at least a one (1) year discovery period. If the bonds are written with less than a three (3) year discovery period, the bonds must contain a provision that cancellation of the bond, whether by or at the request of the insured or by the underwriter, may not take effect before the expiration of ninety (90) days after written notice of the cancellation has been filed with the board, unless an earlier cancellation date is approved by the board. However, ten (10) days written notice is sufficient for the cancellation of a bond due to the nonpayment of a premium.

(b) The bonds must cover all employees and officers for the following perils, and coverage may be made under separate policies:

- (1) Dishonesty of employees and officers.
- (2) Robbery, burglary, larceny, theft, false pretense, holdup, misplacement, mysterious disappearance, and damage or destruction while property is in a bank or a recognized place of safe deposit or in transit.
- (3) Forgery or alteration.

(c) The bonds must be written by an insurer licensed to transact business in Indiana.

(d) A bond must be in the amount prescribed in the following table but may not exceed one million dollars (\$1,000,000).

ASSETS		BOND
More Than	But Not More Than	
\$50,000	\$500,000	\$20,000 plus 6% of the total assets
\$500,000	\$1,000,000	\$50,000 plus 4% of assets over \$500,000
\$1,000,000	\$3,000,000	\$70,000 plus 3% of assets over \$1,000,000
\$3,000,000	\$5,000,000	\$130,000 plus 2% of assets over \$3,000,000
\$5,000,000	\$10,000,000	\$170,000 plus 1.5% of assets over \$5,000,000
\$10,000,000		\$245,000 plus 0.75% of assets over \$10,000,000



1 **Sec. 13. (a) To comply with this chapter, a group may invest**
 2 **assets only in the following:**

3 **(1) Direct obligations of the United States for the payment of**
 4 **money or obligations for the payment of money that are**
 5 **guaranteed as to the payment of principal and interest by the**
 6 **United States.**

7 **(2) Direct obligations for the payment of money issued by an**
 8 **agency or instrumentality of the United States or obligations**
 9 **for the payment of money that are guaranteed as to payment**
 10 **and principal and interest by an agency or instrumentality of**
 11 **the United States.**

12 **(3) Bonds or securities that are issued by a state of the United**
 13 **States and that are secured by the full faith and credit of that**
 14 **state.**

15 **(4) Certificates of deposit, time deposits, or demand deposits**
 16 **in a bank in Indiana that has deposits insured by the Federal**
 17 **Deposit Insurance Corporation.**

18 **(5) Saving certificates issued by a savings and loan association**
 19 **in Indiana that has deposits insured by the Federal Savings**
 20 **and Loan Insurance Corporation.**

21 **(6) Direct, unconditional obligations of a solvent business**
 22 **corporation for the payment of money, but only under the**
 23 **following conditions:**

24 **(A) The corporation is incorporated under the laws of the**
 25 **United States or any state.**

26 **(B) The corporation has a net worth of at least fifty million**
 27 **dollars (\$50,000,000).**

28 **(C) The corporation is not affiliated with any member of**
 29 **the group.**

30 **(D) The obligation of the corporation has not been in**
 31 **default as to principal or interest during the five (5) years**
 32 **preceding the date of investment. The corporation need not**
 33 **have obligations outstanding during that period and need**
 34 **not have been in existence for that period. Obligations**
 35 **acquired under this subdivision may be newly issued.**

36 **(E) A group may not invest more than thirty-three and**
 37 **one-third percent (33 1/3%) of its assets under this**
 38 **subdivision.**

39 **(F) A group may not invest more than five percent (5%) of**
 40 **its assets in the obligations of one (1) corporation.**

41 **(7) Obligations of a political subdivision of another state for**
 42 **the payment of money, but only under the following**

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conditions:

(A) The obligations are payable from ad valorem taxes.

(B) The political subdivision is not in default in the payment of principal or interest on any of its direct, general obligations.

(C) An investment may not be made under this subdivision in obligations that are secured only by special assessments for local improvements.

(D) A group may not invest under this subdivision more than four percent (4%) of its assets in direct, general obligations issued by one (1) political subdivision.

(E) The group may not invest more than fifty percent (50%) of its assets under this subdivision.

(b) Amounts recoverable from authorized excess insurers or reinsurers on unpaid losses may be deducted from the reserves.

(c) All securities eligible for registration must be registered in the name of the group, and all securities must be maintained in a state or national bank having trust powers and located in Indiana.

Sec. 14. (a) If a surety bond is used to meet the security requirement under section 7(b)(3) of this chapter, it must be issued by an authorized insurer or a corporate surety company authorized to transact business in Indiana.

(b) If a security deposit is used to meet the security requirement under section 7(b)(3) of this chapter, securities are limited to:

(1) bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States, or by an agency or instrumentality of the United States;

(2) certificates of deposit in a federally insured financial institution; or

(3) a bond or security issued by another state and backed by the full faith and credit of the other state.

(c) If a letter of credit is used to meet the security requirement under section 7(b)(3) of this chapter, the letter of credit shall be provided by an acceptable bank with a rating of at least "A" by the Thompson Bankwatch rating service.

(d) A bond, security deposit, or letter of credit under this section is:

(1) for the benefit of the state solely to pay claims and associated expenses; and

(2) payable upon the failure of the group to pay benefits that the group is legally obligated to pay under the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the



worker's occupational diseases compensation law (IC 22-3-7).

Sec. 15. (a) In the fiscal years in which group members' contributions are less than claims and administrative expenses, the deficits may be charged against the reserves for participating group members' dividends established for fiscal years in which the dividends were established. The charges must first be made against the immediately preceding fiscal year, and if the reserves for participating group members' dividends for the immediately preceding fiscal year are not adequate to offset the deficit, charges must be made against preceding fiscal years in reverse order until all the deficits are eliminated. If total accumulated reserves of participating group members' dividends are inadequate to offset the deficit, charges must be made against the reserves accumulated in subsequent fiscal years unless the group's cash demands make it necessary to assess the participating employers to meet the group's cash needs.

(b) If:

- (1) participating group members' contributions plus investment income are less than claims and administrative expenses by an amount that exceeds the reserves for participating group members' dividends established for prior fiscal years' operations; and
- (2) assessing group members becomes necessary to offset the deficit;

the assessments are joint and several based upon each member's pro rata portion of the audited earned contributions for the fiscal years creating the deficit. Uncollectible assessments must be collected on a pro rata basis from the remaining participating group members.

(c) In the fiscal years in which group members' contributions plus investment income exceed the sum of:

- (1) claim expenses;
- (2) administrative expenses;
- (3) funds needed to meet the rules of the board concerning escrow or security reserves; and
- (4) incurred but not reported reserves;

the excess funds may be set aside on the books of the group as a reserve for dividends to participating group members. Reserves for participating employers' dividends may be paid in cash to the employers not earlier than December 31 of the third year for which the reserves were first established.

(d) Liquidation, conservation, and dissolution of groups shall be



1 conducted by the board.

2 Sec. 16. (a) An individual member may elect to terminate the
3 member's participation in a group and may be subject to
4 cancellation by the group. Except as provided in subsection (c),
5 termination or cancellation may not occur less than sixty (60) days
6 after the service company has received notice of the termination or
7 cancellation from the member.

8 (b) If the individual member is a partnership, the notice must
9 state the names and addresses of all known partners. If the
10 member is doing business under an assumed name, the notice must
11 state the names of all known parties doing business under the
12 assumed name. If the member is a corporation doing business
13 under a number of divisions, the notice must state the names of all
14 known divisions of the corporation. The group remains liable for
15 all claims applicable to the period during which the terminating
16 member was a member of the group, including the sixty (60) day
17 period required for termination.

18 (c) Termination of a group member for nonpayment of
19 contributions may not take place less than ten (10) days after
20 written notice of cancellation has been provided to the member.

21 Sec. 17. (a) A person or an entity desiring to be licensed as a
22 service company to service a group created under this chapter shall
23 apply to the board on forms prescribed by the board. The license
24 must designate areas of administrative services that the service
25 company is authorized to perform. A license granted under this
26 section is effective for five (5) years, unless revoked or suspended
27 by order of the board on the grounds that the licensee does not
28 have the organization or financial integrity necessary to supply the
29 service for which the license was issued.

30 (b) If the service company intends to provide claims adjusting
31 services, the service company must have supervisory personnel,
32 each of whom possesses at least three (3) years experience in
33 adjusting worker's compensation claims.

34 (c) The service company must have an employee located in
35 Indiana who is able to act as a resident agent and is authorized to
36 act in all matters concerning the service company.

37 (d) All records of the service company relating to any of the
38 services offered or provided to a group must be open to inspection
39 by the board or its designated representatives during normal
40 business hours.

41 Sec. 18. The board may designate an authorized representative
42 of the state board of accounts to examine the affairs, transactions,



1 accounts, records, and assets and liabilities of each group as often
 2 as the board considers necessary. However, the examinations may
 3 not occur more often than annually without sufficient cause. The
 4 expense of the examinations must be paid by the group.

5 SECTION 3. IC 22-3-5.2 IS ADDED TO THE INDIANA CODE
 6 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 1999]:

8 **Chapter 5.2. The Worker's Compensation Self-Insurance Group**
 9 **Guaranty Fund**

10 **Sec. 1. (a)** The general assembly finds that the establishment of
 11 a group self-insurance guaranty fund is a necessary component of
 12 a complete system of worker's compensation to provide for the
 13 comfort, health, safety, and general welfare of employees and their
 14 dependents by relieving the monetary consequences of an
 15 occupational injury, a disease, or a death and by securing the
 16 payment of compensation in a timely manner.

17 **(b)** The general assembly finds that some provision must be
 18 made for the continuation of worker's compensation and worker's
 19 occupational diseases compensation benefits that are delayed due
 20 to the failure of a self-insured employer to meet the employer's
 21 obligations.

22 **Sec. 2.** This chapter does not apply to a public sector group
 23 self-insurer.

24 **Sec. 3.** As used in this chapter, "board" means the worker's
 25 compensation board.

26 **Sec. 4.** As used in this chapter, "certificate of default" means a
 27 finding issued by the board under section 11 of this chapter that is
 28 based on information that a worker's compensation self-insurance
 29 group has failed to pay compensation or benefits as required by
 30 IC 22-3-2 through IC 22-3-7.

31 **Sec. 5.** As used in this chapter, "defaulting group" means a
 32 worker's compensation self-insurance group that has been issued
 33 a certificate of default by the board under section 11 of this
 34 chapter.

35 **Sec. 6.** As used in this chapter, "directors" means the board of
 36 directors of the group guaranty fund.

37 **Sec. 7.** As used in this chapter, "fund" means the group
 38 guaranty fund established by section 10 of this chapter.

39 **Sec. 8.** As used in this chapter, "group" means a worker's
 40 compensation self-insurance group certified under IC 22-3-5.1.

41 **Sec. 9.** As used in this chapter, "group assessment account"
 42 means a bank account maintained by the group guaranty fund to

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1 receive the proceeds of the group guaranty fund's assessments and
 2 security deposits called by the board when a group has been issued
 3 a certificate of default.

4 **Sec. 10. (a)** The group guaranty fund is established to meet the
 5 obligations of defaulting worker's compensation self-insurance
 6 groups that are incurred during the group's participation in the
 7 group guaranty fund before and after the exhaustion of all assets,
 8 including any bonds, escrow deposits, letters of credit, insurance,
 9 or reinsurance, as required under this chapter. The fund's method
 10 of operation must be defined in the plan of operation as provided
 11 in this section. The fund functions as the guaranty fund for groups
 12 certified under IC 22-3-5.1.

13 (b) A group that holds a valid certificate of approval issued by
 14 the board under IC 22-3-5.1 shall participate as a member of the
 15 fund. Participation in the fund is a condition of maintaining the
 16 group's certificate of approval. The board may revoke a group's
 17 certificate of approval if the group fails to maintain membership
 18 in the fund or fails to pay an assessment levied by the fund under
 19 this chapter.

20 (c) The fund is governed by a board of directors that consists of
 21 one (1) representative from each group. A designee of the worker's
 22 compensation board is an ex officio, nonvoting member of the
 23 fund's board of directors. A director may designate another
 24 representative of the group to act as the director's designee.

25 (d) The fund must incorporate under IC 23-17 and establish
 26 bylaws and a plan of operation, subject to the prior approval of the
 27 board, that are necessary to carry out the purposes of this chapter
 28 and the responsibilities of the fund. The bylaws and plan of
 29 operation may be amended as necessary with the prior approval of
 30 the board.

31 (e) The directors may:

- 32 (1) carry out the responsibilities of the fund directly or by
- 33 contract; and
- 34 (2) purchase services and insurance and borrow funds
- 35 determined by the directors to be necessary for the protection
- 36 of the groups and their employees.

37 (f) The following are vested in the fund and are not state
 38 property or subject to appropriation by the general assembly:

- 39 (1) Securities that are collected by or on behalf of the board
- 40 and disbursed to the fund.
- 41 (2) Assessments made by the fund and any interest that may
- 42 accrue.



1 (g) Money in the fund, except for money necessary to cover
 2 administrative costs and other costs determined by the board to be
 3 necessary to conduct the business of the fund, may only be used to:

- 4 (1) compensate persons entitled to receive worker's
 5 compensation benefits from a group that is unable to meet the
 6 group's obligations under IC 22-3-2 through IC 22-3-7; and
 7 (2) defray the expenses of the fund.

8 (h) A group, the fund, and the agents, employees, and directors
 9 of the fund are not liable and a cause of action may not be initiated
 10 at law or in equity because of any action or inaction taken by the
 11 group, the fund, and the agents, employees, and directors of the
 12 fund in the performance of their powers and duties or in the
 13 administration of the fund under this chapter.

14 Sec. 11. (a) The board shall promptly notify the directors when
 15 the board has knowledge that a group has failed to pay worker's
 16 compensation benefits as required by IC 22-3-2 through IC 22-3-7.

17 (b) If the board determines that a group has failed to pay
 18 worker's compensation benefits as required by IC 22-3-2 through
 19 IC 22-3-7, the board shall issue a certificate of default against the
 20 group, and the security deposit must be used to administer and pay
 21 the group's worker's compensation and occupational diseases
 22 compensation obligations or to reimburse the fund for payments
 23 already made on behalf of the group that deposited or posted the
 24 security with the board.

25 (c) When the board issues a certificate of default, the board shall
 26 do the following:

- 27 (1) Immediately notify by certified mail:
 28 (A) the surety, the issuer of an irrevocable letter of credit,
 29 and any custodian of the security required by this chapter;
 30 and
 31 (B) the fund.
 32 (2) Call in the security deposit and transfer and assign it to
 33 the fund along with any interest that has accrued since the
 34 date the security deposit was paid to the board.
 35 (3) Assign the proceeds of the surety bond or letter of credit
 36 to the fund.
 37 (4) Order the fund to assume the defaulting group
 38 self-insurer's obligations for which the defaulting group is
 39 liable under IC 22-3-2 through IC 22-3-7.

40 (d) Not later than thirty (30) days after receipt of the
 41 notification and order by the board under subsection (c), the fund
 42 shall begin payment of the obligations to claimants whose

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entitlement to the benefits has been ascertained by the fund. The fund may administer the payment of benefits or it may retain a service company to administer the payment of benefits.

(e) When the fund assumes the obligations under subsection (d), the fund may immediately possess any posted or deposited security from the custodian, surety, or issuer of an irrevocable letter of credit.

(f) If the fund assumes the obligations of a defaulting group self-insurer, the proceeds of any surety bond, specific excess insurance or aggregate excess insurance policy, or any combination of reimbursements shall be paid to the fund instead of to the defaulting group self-insurer or its successor in interest.

(g) If following the issuance of a certificate of default the board calls a group's security deposit under this section, the board shall initiate proceedings to revoke the self-insurance certificate of approval as soon as practicable.

Sec. 12. (a) Notwithstanding any other provision in this chapter, any cash, securities, irrevocable letter of credit, specific excess or aggregate excess insurance proceeds, or any other security deposited or posted under this chapter shall be used to pay worker's compensation claims or to reimburse the fund for payments already made on behalf of the member that deposited or posted the security with the board.

(b) After the security has been exhausted as provided under subsection (a), assessments may be made for the payment of worker's compensation claims from the fund.

(c) If the group assessment account is used to pay worker's compensation claims on an emergency or interim basis pending receipt by the fund of security that is due but not yet received, the group assessment account shall be reimbursed for payment from the security when it is received.

Sec. 13. (a) To the extent necessary to secure funds for the initial establishment of the group assessment account, the directors shall levy assessments based on the premium for each group.

(b) Except to permit the assessment of a new worker's compensation self-insurance group, an assessment may not be levied against a group that will cause the group assessment account to exceed one million dollars (\$1,000,000) following the initial assessment. An initial assessment of seventy-five hundredths percent (0.75%) of each group's most recent standard contribution shall be levied over a three (3) year period, one-third (1/3) of which must be collected in each of the three (3) years, with the first year



1 to begin on the date of incorporation of the fund.

2 (c) Except as provided in subsection (b), an assessment against
3 a member may not be made unless the current balance of the fund
4 becomes insufficient to ensure prompt payment of outstanding
5 claims and to cover administrative and other costs in managing the
6 fund. If an additional assessment is necessary, the directors shall
7 levy an assessment to bring the minimum amount of the fund up to
8 a level determined by the directors, in accordance with the fund's
9 bylaws, to be sufficient to ensure that the fund is able to fulfill its
10 obligations.

11 (d) An assessment made under subsection (c) must be made on
12 a uniform percentage of the figure applicable. However, the
13 assessment levied against a self-insurer in one (1) year may not
14 exceed seventy-five hundredths percent (0.75%) of the premium
15 paid during the calendar year preceding the member's date of the
16 assessment.

17 (e) Assessments must be remitted to and administered by the
18 directors in the manner specified by the approved plan of
19 operations. Each member assessed has at least thirty (30) days
20 written notice before the assessment is due and payable.

21 (f) The fund may not pay dividends, rebates, or interest or
22 distribute any income of the corporation or fund income to any of
23 the members of the fund.

24 (g) The board shall be provided with any relevant information
25 by the employer, excess insurer, service company, issuer of an
26 irrevocable letter of credit, insurer of any security bond, or
27 custodian of a security necessary for the board to carry out the
28 board's obligations under this chapter. The board shall provide
29 this information to the fund if necessary for the fund to carry out
30 obligations of the fund under this chapter.

31 (h) If the proceeds of a group's security deposit are insufficient
32 to pay all compensation benefits to which the employees of a
33 defaulting self-insurer are entitled as determined by the directors,
34 the fund shall retain the right to seek or obtain full reimbursement
35 from any legally liable group or entity for the amount of
36 compensation benefits paid by the fund in excess of the amount
37 covered by the security deposit proceeds.

38 Sec. 14. A group that seeks to terminate operation as a
39 self-insurance group must discharge its continuing obligations to
40 secure the payment of claims that accrued during the period of
41 self-insurance by complying with the following obligations of
42 current certificate holders:



1 (1) File reports with the board that are required by this
2 chapter.

3 (2) Deposit and maintain a security deposit for the accrued
4 liability for the payment of any compensation that may
5 become due until all claims have been paid in full and the
6 board approves the release of the deposit. However, if a group
7 purchases an insurance policy that provides coverage of all
8 claims for compensation arising out of injuries occurring
9 during the period from an insurer authorized to transact
10 worker's compensation insurance in Indiana, the group is not
11 required to maintain a security deposit for the payment of the
12 claims covered under the policy period.

13 (3) Pay the assessments not later than thirty (30) days after
14 notice is sent by the fund for a period of three (3) years after
15 the last date the group certificate of approval was in effect.

16 Sec. 15. (a) If the fund makes a payment of compensation under
17 this chapter, the fund has the same preference over the other
18 debtors of the group or any members of the group that is given by
19 law to the person directly entitled to the compensation.

20 (b) The fund is not liable for the payment of any penalties or
21 interest assessed for any act or omission of the defaulting group.

22 (c) The fund is a party in interest in all proceedings involving
23 compensation claims and damages against a defaulting group
24 whose compensation obligations have been paid or assumed by the
25 fund. The fund has the same rights and defenses as the defaulting
26 group, including the following:

27 (1) To appear, defend, and appeal claims.

28 (2) To receive notice of, investigate, adjust, compromise,
29 settle, and pay claims.

30 (3) To investigate, handle, and deny claims.

31 Sec. 16. (a) The fund has the right and obligation to obtain
32 reimbursement from a defaulting group up to the amount of the
33 compensation obligations paid and assumed by the fund on behalf
34 of the defaulting group, including reasonable administrative and
35 legal costs. This right includes a right to claim wages and other
36 necessities of life advanced to claimants as the subrogee of the
37 claimants in an action to collect against the defaulting group as
38 debtor.

39 (b) The fund has the right and obligation to obtain from the
40 security deposit of a defaulting group the amount of the group's
41 compensation obligations, including reasonable administrative and
42 legal costs paid or assumed by the fund. Reimbursement of



1 administrative and legal costs are subject to approval by a
 2 majority of the fund's voting directors. The fund is a party in
 3 interest in any action to obtain the security deposit for the payment
 4 of compensation obligations of a defaulting group.

5 (c) The fund has the right to bring an action against any person
 6 or entity to recover compensation paid and liability assumed by the
 7 fund, including any excess insurance carrier of the defaulting
 8 group self-insurer.

9 Sec. 17. (a) The directors shall annually contract for an
 10 independent certified audit of the financial activities of the fund.
 11 An annual report on the financial status of the fund on June 30
 12 must be submitted to the board and to each group.

13 (b) The fund is liable for the payment of benefits for members
 14 only when there has been a certificate of default issued by the
 15 board after the date on which the fund is established for events
 16 occurring after the date on which the fund is established.

17 Sec. 18. (a) To assist the board with the administration of this
 18 chapter and IC 22-3-5.1, a worker's compensation advisory
 19 committee is established. The advisory committee consists of five
 20 (5) members from groups authorized to self-insure in Indiana.
 21 Three (3) members must be elected by the members of the fund
 22 and two (2) members must be appointed by the board.

23 (b) At the request of the board, the advisory committee shall
 24 meet and advise the board about determinations of a group's
 25 compliance with the requirements to self-insure under this chapter
 26 and IC 22-3-5.1. The advisory committee shall advise the board if
 27 it has information that a group may become a defaulting group
 28 self-insurer.

29 SECTION 4. IC 22-3-7-34 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 34. (a) Every employer
 31 bound by the compensation provisions of this chapter, except the state,
 32 counties, townships, cities, towns, school cities, school towns, school
 33 townships, other municipal corporations, state institutions, state boards,
 34 and state commissions, shall insure the payment of compensation to the
 35 employer's employees and their dependents in the manner provided in
 36 this chapter, or procure from the worker's compensation board a
 37 certificate authorizing the employer to carry such risk without
 38 insurance. While that insurance or certificate remains in force, the
 39 employer, or those conducting the employer's business, and the
 40 employer's occupational disease insurance carrier shall be liable to any
 41 employee and the employee's dependents for disablement or death from
 42 occupational disease arising out of and in the course of employment



only to the extent and in the manner specified in this chapter.

(b) Every employer who, by election, is bound by the compensation provisions of this chapter, except those exempted from the provisions by subsection (a), shall:

(1) insure and keep insured the employer's liability under this chapter in some corporation, association, or organization authorized to transact the business of worker's compensation insurance in this state; ~~or~~

(2) furnish to the worker's compensation board satisfactory proof of the employer's financial ability to pay the compensation in the amount and manner and when due as provided for in this chapter;

or

(3) join a worker's compensation self-insurance group of at least eleven (11) employers that have associated for the purpose of pooling their liabilities under IC 22-3-5.1.

~~In the latter case~~ Under subdivisions (2) and (3) the board may require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred.

(c) Every employer required to carry insurance under this section shall file with the worker's compensation board in the form prescribed by it, within ten (10) days after the termination of the employer's insurance by expiration or cancellation, evidence of the employer's compliance with subsection (b) and other provisions relating to the insurance under this chapter. The venue of all criminal actions under this section lies in the county in which the employee was last exposed to the occupational disease causing disablement. The prosecuting attorney of the county shall prosecute all violations upon written request of the board. The violations shall be prosecuted in the name of the state.

(d) Whenever an employer has complied with subsection (b) relating to self-insurance, the worker's compensation board shall issue to the employer a certificate which shall remain in force for a period fixed by the board, but the board may, upon at least thirty (30) days notice, and a hearing to the employer, revoke the certificate, upon presentation of satisfactory evidence for the revocation. After the revocation, the board may grant a new certificate to the employer upon the employer's petition, and satisfactory proof of the employer's financial ability.

(e)(1) Subject to the approval of the worker's compensation board, any employer may enter into or continue any agreement with the employer's employees to provide a system of compensation, benefit, or insurance in lieu of the compensation and insurance provided by this



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chapter. A substitute system may not be approved unless it confers benefits upon employees and their dependents at least equivalent to the benefits provided by this chapter. It may not be approved if it requires contributions from the employees unless it confers benefits in addition to those provided under this chapter, which are at least commensurate with such contributions.

(e)(2) The substitute system may be terminated by the worker's compensation board on reasonable notice and hearing to the interested parties, if it appears that the same is not fairly administered or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this chapter. On termination, the board shall determine the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the court of appeals.

(f)(1) No insurer shall enter into or issue any policy of insurance under this chapter until its policy form has been submitted to and approved by the worker's compensation board. The board shall not approve the policy form of any insurance company until the company shall file with it the certificate of the insurance commissioner showing that the company is authorized to transact the business of worker's compensation insurance in Indiana. The filing of a policy form by any insurance company or reciprocal insurance association with the board for approval constitutes on the part of the company or association a conclusive and unqualified acceptance of each of the compensation provisions of this chapter, and an agreement by it to be bound by the compensation provisions of this chapter.

(f)(2) All policies of insurance companies and of reciprocal insurance associations, insuring the payment of compensation under this chapter, shall be conclusively presumed to cover all the employees and the entire compensation liability of the insured under this chapter in all cases in which the last day of the exposure rendering the employer liable is within the effective period of such policy.

(f)(3) Any provision in any such policy attempting to limit or modify the liability of the company or association insuring the same shall be wholly void.

(f)(4) Every policy of any company or association shall be deemed to include the following provisions:

"(A) The insurer assumes in full all the obligations to pay physician's fees, nurse's charges, hospital supplies, burial expenses, compensation or death benefits imposed upon or accepted by the insured under this chapter.

(B) This policy is subject to the provisions of this chapter relative



1 to the liability of the insured to pay physician's fees, nurse's
 2 charges, hospital services, hospital supplies, burial expenses,
 3 compensation or death benefits to and for such employees, the
 4 acceptance of such liability by the insured, the adjustment, trial
 5 and adjudication of claims for such physician's fees, nurse's
 6 charges, hospital services, hospital supplies, burial expenses,
 7 compensation, or death benefits.

8 (C) Between this insurer and the employee, notice to or
 9 knowledge of the occurrence of the disablement on the part of the
 10 insured (the employer) shall be notice or knowledge thereof, on
 11 the part of the insurer. The jurisdiction of the insured (the
 12 employer) for the purpose of this chapter is the jurisdiction of this
 13 insurer, and this insurer shall in all things be bound by and shall
 14 be subject to the awards, judgments and decrees rendered against
 15 the insured (the employer) under this chapter.

16 (D) This insurer will promptly pay to the person entitled to the
 17 same all benefits conferred by this chapter, including all
 18 physician's fees, nurse's charges, hospital services, hospital
 19 supplies, burial expenses, and all installments of compensation or
 20 death benefits that may be awarded or agreed upon under this
 21 chapter. The obligation of this insurer shall not be affected by any
 22 default of the insured (the employer) after disablement or by any
 23 default in giving of any notice required by this policy, or
 24 otherwise. This policy is a direct promise by this insurer to the
 25 person entitled to physician's fees, nurse's charges, fees for
 26 hospital services, charges for hospital services, charges for
 27 hospital supplies, charges for burial, compensation, or death
 28 benefits, and shall be enforceable in the name of the person.

29 (E) Any termination of this policy by cancellation shall not be
 30 effective as to employees of the insured covered hereby unless at
 31 least thirty (30) days prior to the taking effect of such
 32 cancellation, a written notice giving the date upon which such
 33 termination is to become effective has been received by the
 34 worker's compensation board of Indiana at its office in
 35 Indianapolis, Indiana.

36 (F) This policy shall automatically expire one (1) year from the
 37 effective date of the policy, unless the policy covers a period of
 38 three (3) years, in which event, it shall automatically expire three
 39 (3) years from the effective date of the policy. The termination
 40 either of a one (1) year or a three (3) year policy, is effective as to
 41 the employees of the insured covered by the policy."

42 (f)(5) All claims for compensation, nurse's charges, hospital

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1 services, hospital supplies, physician's fees, or burial expenses may be
2 made directly against either the employer or the insurer or both, and the
3 award of the worker's compensation board may be made against either
4 the employer or the insurer or both.

5 (f)(6) If any insurer shall fail to pay any final award or judgment
6 (except during the pendency of an appeal) rendered against it, or its
7 insured, or, if it shall fail to comply with this chapter, the worker's
8 compensation board shall revoke the approval of its policy forms, and
9 shall not accept any further proofs of insurance from it until it shall
10 have paid the award or judgment or complied with this chapter, and
11 shall have resubmitted its policy form and received the approval of the
12 policy by the industrial board.

13 (g) No policy of insurance covering the liability of an employer for
14 worker's compensation shall be construed to cover the liability of the
15 employer under this chapter for any occupational disease unless the
16 liability is expressly accepted by the insurance carrier issuing the
17 policy and is endorsed in that policy. The insurance or security in force
18 to cover compensation liability under this chapter shall be separate
19 from the insurance or security under IC 22-3-2 through IC 22-3-6. Any
20 insurance contract covering liability under either part of this article
21 need not cover any liability under the other.

22 (h) For the purpose of complying with subsection (b), groups of
23 employers are authorized to form mutual insurance associations or
24 reciprocal or interinsurance exchanges subject to any reasonable
25 conditions and restrictions fixed by the department of insurance. This
26 subsection does not apply to mutual insurance associations and
27 reciprocal or interinsurance exchanges formed and operating on or
28 before January 1, 1991, which shall continue to operate subject to the
29 provisions of this chapter and to such reasonable conditions and
30 restrictions as may be fixed by the worker's compensation board.

31 (i) Membership in a mutual insurance association or a reciprocal or
32 interinsurance exchange so proved, together with evidence of the
33 payment of premiums due, is evidence of compliance with subsection
34 (b).

35 (j) Any person bound under the compensation provisions of this
36 chapter, contracting for the performance of any work exceeding one
37 thousand dollars (\$1,000) in value, in which the hazard of an
38 occupational disease exists, by a contractor subject to the compensation
39 provisions of this chapter without exacting from the contractor a
40 certificate from the worker's compensation board showing that the
41 contractor has complied with subsections (a), (b), and (c), shall be
42 liable to the same extent as the contractor for compensation, physician's



1 fees, hospital fees, nurse's charges, and burial expenses on account of
2 the injury or death of any employee of such contractor, due to
3 occupational disease arising out of and in the course of the
4 performance of the work covered by such contract.

5 (k) Any contractor who sublets any contract for the performance of
6 any work to a subcontractor subject to the compensation provisions of
7 this chapter, without obtaining a certificate from the worker's
8 compensation board showing that the subcontractor has complied with
9 subsections (a), (b), and (c), is liable to the same extent as the
10 subcontractor for the payment of compensation, physician's fees,
11 hospital fees, nurse's charges, and burial expense on account of the
12 injury or death of any employee of the subcontractor due to
13 occupational disease arising out of and in the course of the
14 performance of the work covered by the subcontract.

15 (l) A person paying compensation, physician's fees, hospital fees,
16 nurse's charges, or burial expenses, under subsection (j) or (k), may
17 recover the amount paid or to be paid from any person who would
18 otherwise have been liable for the payment thereof and may, in
19 addition, recover the litigation expenses and attorney's fees incurred in
20 the action before the worker's compensation board as well as the
21 litigation expenses and attorney's fees incurred in an action to collect
22 the compensation, medical expenses, and burial expenses.

23 (m) Every claim filed with the worker's compensation board under
24 this section shall be instituted against all parties liable for payment.
25 The worker's compensation board, in an award under subsection (j),
26 shall fix the order in which such parties shall be exhausted, beginning
27 with the immediate employer and, in an award under subsection (k),
28 shall determine whether the subcontractor has the financial ability to
29 pay the compensation and medical expenses when due and, if not, shall
30 order the contractor to pay the compensation and medical expenses.

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